

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4683 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

IDRISHBHAI IBRAHIMJIBHAI KHATRI

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner No. 1

MS DS PANDIT, AGP for Respondents No. 1 and 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 05/12/2001

ORAL JUDGEMENT

1. The petitioner is the owner of lands bearing
Block Nos.239 and 259 admeasuring 3643 sq. mtrs. and
7588 sq. mtrs. respectively of village Bodeli, Taluka

Sankheda, District Vadodara. On 10th August, 2000, he made an application to the Taluka Development Officer, Sankheda for his permission to use the said lands for non-agricultural purpose namely, storing goods. The Taluka Development Officer, by his communication dated 01st November, 2000, informed the petitioner that his application has been rejected on the ground that the opinion of the authorities named in the communication had not been received. On 19th January, 2001, the Deputy Collector, Chota Udepur issued a notice to the petitioner stating that in the preliminary inquiry it was found that the provisions of Sections 43, 63 and 65 of the Tenancy Act had been violated in respect of the lands in question and calling upon the petitioner to show cause why action should not be taken and lands should not be forfeited. The petitioner submitted his reply to the said show cause notice. His explanation was that the land of Survey No. 239 was situated in a residential area and it could not be cultivated since it was not possible to protect the crop. As for Survey No.259, it was stated that the said land was situated on the river bank adjoining a crematorium and since the said land was flooded by water and sand from river, it could not be cultivated. He, therefore, submitted that the proceedings should be dropped and permission may be granted for non-agricultural use. His oral statement was also recorded on 05th February, 2001 in which he gave the same explanation.

2. However, the Deputy Collector did not accept the explanation submitted by the petitioner and by his order dated 2nd May, 2001 declared that the management of the land shall be assumed by the Government for a period of 10 years.

3. The petitioner has, therefore, filed this petition under Articles 226 and 227 of the Constitution challenging the said order.

4. Under Section 65 of the Bombay Tenancy and Agricultural Lands Act, if any land has remained uncultivated for any two consecutive years through the default of the holder or any other acts not beyond his control, the Government may, after making such inquiry as it deems fit, declare that the management of such land shall be assumed. Here, in the present case it is not in dispute that the lands in question had not been cultivated for a period of 10-12 years. According to the petitioner, the lands could not be cultivated for reasons stated in his explanation. The Deputy Collector has not believed the explanation. However, it is contended on

behalf of the petitioner that it was incumbent on the part of the Deputy Collector to hold a proper inquiry and to give a proper opportunity to the petitioner to establish his case that the lands could not be cultivated for the reasons given by him. The petitioner has produced maps to show that the situation of the lands is such that it is no longer possible to cultivate the said lands. The learned counsel for the petitioner submitted that if an opportunity had been given to the petitioner, he would have led oral and documentary evidence to show that it was not possible to cultivate the lands. In the circumstances, in my opinion, it cannot be said that proper opportunity was given to the petitioner to establish his case. The petition is, therefore, allowed. The impugned order is set aside. The respondent no.2 may, after giving an opportunity to the petitioner to lead oral and documentary evidence in support of his case, pass a fresh order in accordance with law. Rule made absolute accordingly.

hki